

# OFFICIAL GAZETTE



## GOVERNMENT OF GOA, DAMAN AND DIU

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Law and Judicial Department

#### Notification

LD/2784/72

The Hire Purchase Act, 1972 (26 of 1972), the General Insurance (Emergency Provisions) Amendment Act, 1972 (27 of 1972), the National Service Act, 1972 (28 of 1972), the Constitution (Twenty Ninth Amendment) Act, 1972 which were recently passed by the Parliament and assented to by the President of India are hereby published for general information of the public.

M. S. Borkar, Under Secretary.

Panaji, 26th July, 1972.

The Hire-Purchase Act, 1972

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### The Hire-Purchase Act, 1972

AN

ACT

*to define and regulate the rights and duties of parties to hire-purchase agreements and for matters connected therewith or incidental thereto.*

Be it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

##### CHAPTER I

##### Preliminary

1. Short title, extent and commencement. — (1) This Act may be called the Hire-purchase Act, 1972.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

(a) “contract of guarantee”, in relation to any hire-purchase agreement, means a contract whereby a person (in this Act referred to as the surety) guarantees the performance of all or any of the hirer’s obligations under the hire-purchase agreement;

(b) “hire” means the sum payable periodically by the hirer under a hire-purchase agreement;

(c) “hire-purchase agreement” means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and includes an agreement under which—

(i) possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments, and

(ii) the property in the goods is to pass to such person on the payment of the last of such instalments, and

(iii) such person has a right to terminate the agreement at any time before the property so passes;

(d) “hire-purchase price” means the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of, or the acquisition of property in, the goods to which the agreement relates; and includes any sum so payable by the hirer under the hire-purchase agreement by way of a deposit or other initial payment, or credited or to be credited to him under such agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner or to any other person or is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means; but does not include any sum payable as a penalty or as compensation or damages for a breach of the agreement;

(e) “hirer” means the person who obtains or has obtained possession of goods from an owner under a hire-purchase agreement, and includes a person to whom the hirer’s rights or liabilities under the agreement have passed by assignment or by operation of law;

(f) “owners” means the person who lets or has let, delivers or has delivered possession of goods, to a hirer under a hire-purchase agreement and includes a person to whom the owner’s property in the goods or any of the owner’s rights or liabilities under the agreement has passed by assignment or by operation of law;

(g) each of the words and expressions used and not defined in this Act but defined in the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 shall have the meaning assigned to it in that Act. 9 of 1872. 3 of 1930.

## CHAPTER II

### Form and contents of hire-purchase agreements

**3. Hire-purchase agreements to be in writing and signed by parties thereto.**—(1) Every hire-purchase agreement shall be—

(a) in writing, and

(b) signed by all the parties thereto.

(2) A hire-purchase agreement shall be void if in respect thereof any of the requirements specified in sub-section (1) has not been complied with.

(3) Where there is a contract of guarantee, the hire-purchase agreement shall be signed by the surety also, and if the hire-purchase agreement is not so signed, the hire-purchase agreement shall be voidable at the option of the owner.

**4. Contents of hire-purchase agreements.**—(1) Every hire-purchase agreement shall state—

(a) the hire-purchase price of the goods to which the agreement relates;

(b) the cash price of the goods, that is to say, the price at which the goods may be purchased by the hirer for cash;

(c) the date on which the agreement shall be deemed to have commenced;

(d) the number of instalments by which the hire-purchase price is to be paid, the amount of each of those instalments, and the date, or the mode of determining the date, upon which it is payable, and the person to whom and the place where it is payable; and

(e) the goods to which the agreement relates, in a manner sufficient to identify them.

(2) Where any part of the hire-purchase price is, or is to be, paid otherwise than in cash or by cheque, the hire-purchase agreement shall contain a description of that part of the hire-purchase price.

(3) Where any of the requirements specified in sub-section (1) or sub-section (2) has not been complied with, the hirer may institute a suit for getting the hire-purchase agreement rescinded; and the court may, if it is satisfied that the failure to comply with any such requirement has prejudiced the hirer, rescind the agreement on such terms as it thinks just, or pass such other order as it thinks fit in the circumstances of the case.

**5. Two or more agreements when treated as a single hire-purchase agreement.**—Where by virtue of two or more agreements in writing, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and the bailee has an option to purchase the goods and the requirements of section 3 and section 4 are satisfied in relation to such agreements, the agreements shall be treated for the purposes of this Act as a single hire-purchase agreement made at the time when the last of the agreements was made.

## CHAPTER III

### Warranties and conditions, limitation on hire-purchase charges and passing of property

**6. Warranties and conditions to be implied in hire-purchase agreements.**—(1) Notwithstanding anything contained in any contract, in every hire-purchase agreement there shall be an implied warranty—

(a) that the hirer shall have and enjoy quiet possession of the goods; and

(b) that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass.

(2) Notwithstanding anything contained in any contract, in every hire-purchase agreement there shall be —

(a) an implied condition on the part of the owner that he has a right to sell the goods at the time when the property is to pass;

(b) an implied condition that the goods shall be of merchantable quality, but no such condition shall be implied by virtue of this clause —

(i) as regards defects of which the owner could not reasonably have been aware at the time when the agreement was made, or

(ii) as regards defects specified in the agreement (whether referred to in the agreement as defects or by any other description to the like effect), or

(iii) where the hirer has examined the goods, or a sample thereof, as regards defects which the examination ought to have revealed, or

(iv) if the goods are second-hand goods and the agreement contains a statement to that effect.

(3) Where the hirer, whether expressly or by implication, —

(a) has made known to the owner the particular purpose for which the goods are required, or

(b) in the course of any antecedent negotiations, has made that purpose known to any other person by whom those negotiations were conducted,

there shall be an implied condition that the goods shall be reasonably fit for such purpose.

(4) Where the goods are let under a hire-purchase agreement by reference to a sample there shall be —

(a) an implied condition on the part of the owner that the bulk will correspond with the sample in quality, and

(b) an implied condition on the part of the owner that the hirer will have a reasonable opportunity of comparing the bulk with the sample.

(5) Where the goods are let under a hire-purchase agreement by description there shall be an implied condition that the goods will correspond with the description; and if the goods are let under the agreement by reference to a sample as well as by description, it shall not be sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

(6) An owner shall not be entitled to rely on any provision in a hire-purchase agreement excluding or modifying the condition set out in sub-section (3) unless he proves that before the agreement was made the provision was brought to the notice of the hirer and its effect made clear to him.

(7) Nothing in this section shall prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied in any hire-purchase agreement.

**7. Limitation on hire-purchase charges.** — (1) In this section, —

(a) “cash price instalment”, in relation to hire-purchase instalment, means an amount which bears to the net cash price the same proportion as

the amount of the hire-purchase instalment bears to the total amount of hire-purchase price;

(b) “deposit” means any sum payable by the hirer under the hire-purchase agreement by way of deposit or other initial payment or credited or to be credited to him under the agreement on account of any such deposit or payment, whether that sum is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means;

(c) “net cash price”, in relation to goods comprised in a hire-purchase agreement, means the cash price of such goods as required to be specified in the hire-purchase agreement under clause (b) of sub-section (1) of section 4, less any deposit as defined in clause (b);

(d) “net hire-purchase charges”, in relation to a hire-purchase agreement for any goods, means the difference between the net hire-purchase price and the net cash price of such goods;

(e) “net hire-purchase price”, in relation to goods comprised in a hire-purchase agreement, means the total amount of hire-purchase price of such goods as required to be specified in the hire-purchase agreement under clause (a) of sub-section (1) of section 4 less, —

(i) any amount which is payable to cover the expenses of delivering the goods or any of them to or to the order of the hirer and which is specified in the agreement as included in the hire-purchase price;

(ii) any amount which is payable to cover registration or other fees under any law in respect of the goods or the agreement or both and which is specified in the agreement as included in the hire-purchase price; and

(iii) any amount which is payable for insurance (other than third party insurance) in respect of the goods and which is specified in the agreement as included in the hire-purchase price;

(f) “statutory charges”, in relation to a hire-purchase agreement, means the aggregate of the amounts calculated in accordance with the provisions of sub-section (2) as statutory charges in respect of each of the cash price instalments corresponding to each of the hire-purchase instalments under the agreement.

(2) The statutory charges, in respect of a cash price instalment, shall be an amount calculated at the rate of thirty *per centum* per annum or, if a lower rate is specified under sub-section (3), at such lower rate, in accordance with the following formula: —

$$C = \frac{CI \times R \times T}{100}$$

where, — SC, — represents the statutory charges;

CI, — represents the amount of cash price instalment expressed in rupees or fraction of rupees.

R, — represents the rate; and

T, — represents the time, expressed in years and fractions of years, that elapses between the date of the agreement and the date on which the hire-purchase instal-

ment corresponding to the cash price instalment is payable under the agreement.

(3) The Central Government may, by notification in the Official Gazette, and after consultation with the Reserve Bank of India, specify the rate *per centum* per annum, being a rate which shall not be less than ten *per centum* per annum, at which statutory charges may be calculated under sub-section (2) and different rates may be so specified in respect of hire-purchase agreements relating to different classes or sub-classes of goods.

(4) Where the net hire-purchase charges in relation to a hire-purchase agreement exceed the statutory charges in relation to such agreement calculated in accordance with the provisions of sub-section (2), the hirer may, by notice in writing to the owner, either elect to treat the agreement as void or to have his liability reduced by the amount by which the net hire-purchase charges exceed the statutory charges aforesaid.

(5) Where a hirer elects, in accordance with the provisions of sub-section (4), to treat the hire-purchase agreement as void, the agreement shall be void, and the amount paid or provided whether by cash, cheque or other consideration, by or on behalf of the hirer in relation to the agreement shall be recoverable by the hirer as a debt due to him by the owner.

(6) Where the hirer elects to have his liability reduced by the amount referred to in sub-section (4), his liability shall be reduced by that amount and that amount may be set off by the hirer against the amount that would otherwise be due under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer as a debt due to him by the owner.

**8. Passing of property.**—Subject to the provisions of this Act, the property in the goods to which a hire-purchase agreement relates shall pass to the hirer only on the completion of the purchase in the manner provided in the agreement.

#### CHAPTER IV

##### Rights and obligations of the hirer

**9. Right of hirer to purchase at any time with rebate.**—(1) The hirer may, at any time during the continuance of the hire-purchase agreement and after giving the owner not less than fourteen days notice in writing of his intention so to do, complete the purchase of the goods by paying or tendering to the owner the hire-purchase price or the balance thereof as reduced by the rebate calculated in the manner provided in sub-section (2).

(2) The rebate for the purposes of sub-section (1) shall be equal to two-thirds of an amount which bears to the hire-purchase charges the same proportion as the balance of the hire-purchase price not yet due bears to the hire-purchase price.

*Explanation.*—In this sub-section, “hire-purchase charges” means the difference between the hire-purchase price and the cash price as stated in the hire-purchase agreement.

(3) The provisions of this section shall have effect notwithstanding anything to the contrary

contained in the hire-purchase agreement, but where the terms of the agreement entitle the hirer to a rebate higher than that allowed by this section, the hirer shall be entitled to the rebate provided by the agreement.

**10. Right of hirer to terminate agreement at any time.**—(1) The hirer may, at any time before the final payment under the hire-purchase agreement falls due, and after giving the owner not less than fourteen days' notice in writing of his intention so to do and re-delivering or tendering the goods to the owner, terminate the hire-purchase agreement by payment or tender to the owner of the amounts which have accrued due towards the hire-purchase price and have not been paid by him, including the sum, if any, which he is liable to pay under sub-section (2).

(2) Where the hirer terminates the agreement under sub-section (1), and the agreement provides for the payment of a sum named on account of such termination, the liability of the hirer to pay that sum shall be subject to the following conditions, namely:—

(a) where the sum total of the amounts paid and the amounts due in respect of the hire-purchase price immediately before the termination exceeds one-half of the hire-purchase price, the hirer shall not be liable to pay the sum so named;

(b) where the sum total of the amounts paid and the amounts due in respect of the hire-purchase price immediately before the termination does not exceed one-half of the hire-purchase price, the hirer shall be liable to pay the difference between the said sum total and the said one-half, or the sum named in the agreement, whichever is less.

(3) Nothing in sub-section (2) shall relieve the hirer from any liability for any hire which might have accrued due before the termination.

(4) Any provision in any agreement, whereby the right conferred on a hirer by this section to terminate the hire-purchase agreement is excluded or restricted, or whereby any liability in addition to the liability imposed by this Act is imposed on a hirer by reason of the termination of the hire-purchase agreement by him under this section, shall be void.

(5) Nothing in this section shall prejudice any right of a hirer to terminate a hire-purchase agreement otherwise than by virtue of this section.

**11. Right of hirer to appropriate payments in respect of two or more agreements.**—A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements to appropriate the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and, if he fails to make any such appropriation as aforesaid, the sum so paid shall, by virtue of this section, stand appropriated towards the satisfaction of the sums

due under the respective hire-purchase agreements in the order in which the agreements were entered into.

**12. Assignment and transmission of hirer's right or interest under hire-purchase agreement.**—(1) The hirer may assign his right, title and interest under the hire-purchase agreement with the consent of the owner, or, if his consent is unreasonably withheld, without his consent.

(2) Except as otherwise provided in this section, no payment or other consideration shall be required by an owner for his consent to an assignment under sub-section (1), and where an owner requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld.

(3) Where on a request being made by a hirer in this behalf the owner fails or refuses to give his consent to an assignment under sub-section (1) the hirer may apply to the court for an order declaring that the consent of the owner to the assignment has been unreasonably withheld, and where such an order is made the consent shall be deemed to be unreasonably withheld.

*Explanation.*—In this sub-section, "court" means a court which would have jurisdiction to entertain a suit for the relief claimed in the application.

(4) As a condition of granting such consent, the owner may stipulate that all defaults under the hire-purchase agreement shall be made good and may require the hirer and the assignee to execute and deliver to the owner an assignment agreement, in a form approved by the owner, whereby, without affecting the continuing personal liability of the hirer in such respects, the assignee agrees with the owner to be personally liable to pay the instalments of hire remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the assignee indemnifies the hirer in respect of such liabilities.

(5) The right, title and interest of a hirer under a hire-purchase agreement shall be capable of passing by operation of law to the legal representative of the hirer but nothing in this sub-section shall relieve the legal representative from compliance with the provisions of the hire-purchase agreement.

*Explanation.*—In this sub-section, the expression "legal representative" has the same meaning as in clause (11) of section 2 of the Code of Civil Procedure, 1908.

5 of 1908

(6) The provisions of this section shall apply notwithstanding anything to the contrary contained in the hire-purchase agreement.

**13. Obligations of hirer to comply with agreement.**—Subject to the provisions of this Act, a hirer shall be bound—

(a) to pay the hire in accordance with the agreement, and

(b) otherwise to comply with the terms of the agreement.

**14. Obligation of hirer in respect of care to be taken of goods.**—(1) A hirer in the absence of a contract to the contrary,—

(a) shall be bound to take as much care of the goods to which the hire-purchase agreement relates as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value;

(b) shall not be responsible for the loss, destruction or deterioration of the goods, if he has taken the amount of care thereof described in clause (a).

(2) The hirer shall be liable to make compensation to the owner for any damage caused by failure to take care of the goods in accordance with the provisions of sub-section (1).

**15. Obligation of hirer in respect of use of goods.**—If the hirer makes any use of the goods to which the hire-purchase agreement relates which is not according to the conditions of the agreement, the hirer shall be liable to make compensation to the owner for any damage arising to the goods from or during such use.

**16. Obligation of hirer to give information as to whereabouts of goods.**—(1) Where by virtue of a hire-purchase agreement a hirer is under a duty to keep in his possession or control the goods to which the agreement relates, the hirer shall, on receipt of a request in writing from the owner, inform the owner where the goods are at the time when the information is given or, if it is sent by post, at the time of posting.

(2) If the hirer fails without reasonable cause to give the said information within fourteen days of the receipt of the notice, he shall be punishable with fine which may extend to two hundred rupees.

**17. Rights of hirer in case of seizure of goods by owner.**—(1) Where the owner seizes under clause (c) of section 19 the goods let under a hire-purchase agreement, the hirer may recover from the owner the amount, if any, by which the hire-purchase price falls short of the aggregate of the following amounts, namely:—

(i) the amounts paid in respect of the hire-purchase price up to the date of seizure;

(ii) the value of the goods on the date of seizure;

(2) For the purposes of this section, the value of any goods on the date of seizure is the best price that can be reasonably obtained for the goods by the owner on that date less the aggregate of the following amounts, namely:—

(i) the reasonable expenses incurred by the owner for seizing the goods;

(ii) any amount reasonably expended by the owner on the storage, repairs or maintenance of the goods;

(iii) (whether or not the goods have subsequently been sold or otherwise disposed of by the owner) the reasonable expenses of selling or otherwise disposing of the goods; and

(iv) the amount spent by the owner for payment of arrears of taxes and other dues which are payable in relation to the goods under any law for the time being in force and which the hirer was liable to pay.

(3) If the owner fails to pay the amount due from him under the provisions of this section or any portion of such amount, to the hirer within a period of thirty days from the date notice for the payment of the said amount is served on him by the hirer the owner shall be liable to pay interest on such amount at the rate of twelve per cent per annum from the date of expiry of the said period of thirty days.

(4) Where the owner has sold the goods seized by him the onus of proving that the price obtained by him for the goods was the best price that could be reasonably obtained by him on the date of seizure shall lie upon him.

#### CHAPTER V

##### Rights and obligations of the owner

**18. Rights of owner to terminate hire-purchase agreement for default in payment of hire or unauthorised act or breach of express conditions.**—(1) Where a hirer makes more than one default in the payment of hire as provided in the hire-purchase agreement then, subject to the provisions of section 21 and after giving the hirer notice in writing of not less than—

(i) one week, in a case where the hire is payable at weekly or lesser intervals; and

(ii) two weeks, in any other case,

the owner shall be entitled to terminate the agreement by giving the hirer notice of termination in writing:

Provided that if the hirer pays or tenders to the owner the hire in arrears together with such interest thereon as may be payable under the terms of the agreement before the expiry of the said period of one week or, as the case may be, two weeks, the owner shall not be entitled to terminate the agreement.

(2) Where a hirer—

(a) does any act with regard to the goods to which the agreement relates which is inconsistent with any of the terms of the agreement; or

(b) breaks an express condition which provides that, on the breach thereof, the owner may terminate the agreement,

the owner shall, subject to the provisions of section 22, be entitled to terminate the agreement by giving the hirer notice of termination in writing.

**19. Rights of owner on termination.**—Where a hire-purchase agreement is terminated under this Act, then the owner shall be entitled,—

(a) to retain the hire which has already been paid and to recover the arrears of hire due:

Provided that when such goods are seized by the owner, the retention of hire and recovery of the arrears of hire due shall be subject to the provisions of section 17;

(b) subject to the conditions specified in clause (a) and (b) of sub-section (2) of section 10, to forfeit the initial deposit, if so provided in the agreement;

(c) subject to the provisions of section 17 and section 20 and subject to any contract to the contrary, to enter the premises of the hirer and seize the goods;

(d) subject to the provisions of section 21 and section 22, to recover possession of the goods by application under section 29 or by suit;

(e) without prejudice to the provisions of sub-section (2) of section 14 and of section 15, to damages for non-delivery of the goods, from the date on which termination is effective, to the date on which the goods are delivered to or seized by the owner.

**20. Restriction on owner's right to recover possession of goods otherwise than through court.**—(1) Where goods have been let under a hire-purchase agreement and the statutory proportion of the hire-purchase price has been paid, whether in pursuance of the judgment of a court or otherwise, or tendered by or on behalf of the hirer or any surety, the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than in accordance with sub-section (3) or by suit.

*Explanation.*—In this section, “statutory proportion” means,—

(i) one-half, where the hire-purchase price is less than fifteen thousand rupees; and

(ii) three-fourths, where the hire-purchase price is not less than fifteen thousand rupees:

Provided that in the case of motor vehicles as defined in the Motor Vehicles Act, 1939, “statutory proportion” shall mean,—

(i) one-half, where the hire-purchase price is less than five thousand rupees;

(ii) three-fourths, where the hire-purchase price is not less than five thousand rupees but less than fifteen thousand rupees;

(iii) three-fourths or such higher proportion not exceeding nine-tenths as the Central Government may, by notification in the Official Gazette, specify, where the hire-purchase price is not less than fifteen thousand rupees.

(2) If the owner recovers possession of goods in contravention of the provisions of sub-section (1), the hire-purchase agreement, if not previously terminated, shall terminate, and—

(a) the hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner all sums paid by the hirer under the agreement or under any security given by him in respect thereof; and

(b) the surety shall be entitled to recover from the owner all sums paid by him under the contract of guarantee or under any security given by him in respect thereof.

(3) Where, by virtue of the provisions of sub-section (1), the owner is precluded from enforcing a right to recover possession of the goods, he may make an application for recovery of possession of the goods to any court having jurisdiction to entertain a suit for the same relief.

(4) The provisions of this section shall not apply in any case in which the hirer has terminated the agreement by virtue of any right vested in him.

**21. Relief against termination for non-payment of hire.**—Where the owner, after he has terminated the hire-purchase agreement in accordance with the

provisions of sub-section (1) of section 18, institutes a suit or makes an application against the hirer for the recovery of the goods, and at the hearing of the suit or application, the hirer pays or tenders to the owner the hire in arrears, together with such interest thereon as may be payable under the terms of the agreement and the cost of the suit or application incurred by the owner and complies with such other conditions, if any, as the court may think fit to impose, the court may, in lieu of making a decree or order for specific delivery, pass an order relieving the hirer against the termination; and thereupon the hirer shall continue in possession of the goods as if the agreement had not been terminated.

**22. Relief against termination for unauthorised act or breach of express condition.**—Where a hire-purchase agreement has been terminated in accordance with the provisions of clause (a) or clause (b) of sub-section (2) of section 18, no suit or application by the owner against the hirer for the recovery of the goods shall lie unless and until the owner has served on the hirer a notice in writing, —

(a) specifying the particular breach or act complained of; and

(b) if the breach or act is capable of remedy, requiring the hirer to remedy it,

and the hirer fails, within a period of thirty days from the date of the service of the notice, to remedy the breach or act if it is capable of remedy.

**23. Obligation of owner to supply copies and information.**—(1) It shall be the duty of the owner to supply, free of cost, a true copy of the hire-purchase agreement, signed by the owner, —

(a) to the hirer, immediately after execution of the agreement; and

(b) where there is a contract of guarantee, to the surety, on demand made at any time before the final payment has been made under the agreement.

(2) It shall also be the duty of the owner, at any time before the final payment has been made under the hire-purchase agreement, to supply to the hirer, within fourteen days after the owner receives a request in writing from the hirer in this behalf and the hirer tenders to the owner the sum of one rupee for expenses, a statement signed by the owner or his agent showing —

(a) the amount paid by or on behalf of the hirer;

(b) the amount which has become due under the agreement but remains unpaid, and the date upon which each unpaid instalment became due, and the amount of each such instalment; and

(c) the amount which is to become payable under the agreement, and the date or the mode of determining the date upon which each future instalment is to become payable, and the amount of each such instalment.

(3) Where there is a failure without reasonable cause to carry out the duties imposed by sub-section (1), or sub-section (2), then, while the default continues, —

(a) the owner shall not be entitled to enforce the agreement against the hirer or to enforce any

contract of guarantee relating to the agreement, or to enforce any right to recover the goods from the hirer; and

(b) no security given by the hirer in respect of money payable under the agreement or given by a surety in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the hirer or the surety by any holder thereof,

and, if the default continues for a period of two months, the owner shall be punishable with fine which may extend to two hundred rupees.

(4) Nothing in sub-section (3) shall be construed as affecting the right of a third-party to enforce against the owner or hirer or against both the owner and the hirer any charge or encumbrance to which the goods covered by the hire-purchase agreement are subject.

## CHAPTER VI

### Miscellaneous

**24. Discharge of price otherwise than by payment of money.**—Where an owner has agreed that any part of the hire-purchase price may be discharged otherwise than by the payment of money, any such discharge shall, for the purposes of section 10, section 11, section 17, section 20 and section 23, be deemed to be a payment of that part of the hire-purchase price.

**25. Insolvency of hirer, etc.**—(1) Where, during the continuance of the hire-purchase agreement, the hirer is adjudged insolvent under any law with respect to insolvency for the time being in force, the Official Receiver or where the hirer is a company, then in the event of the company being wound up, the liquidator, shall have, in respect of the goods which are in the possession of the hirer under the agreement, the same rights and obligations as the hirer had in relation thereto.

(2) The Official Receiver or the liquidator, as the case may be, may, with the permission of the Insolvency Court or the court in which the winding up proceedings are pending, assign the rights of the hirer under the agreement, to any other person, and the assignee shall have all the rights and be subject to all the obligations of the hirer under the agreement.

*Explanation.*—In this section, "Official Receiver" means an Official Receiver appointed under the Provincial Insolvency Act, 1920, and includes any person holding a similar office under any other law with respect to insolvency for the time being in force. 5 of 1920.

**26. Successive hire-purchase agreements between same parties.**—Where goods have been let under a hire-purchase agreement, and at any time thereafter the owner makes a subsequent hire-purchase agreement with the hirer, whether relating exclusively to other goods or to other goods together with the

goods to which the first agreement relates, any such subsequent hire-purchase agreement shall not have effect in so far as it affects prejudicially any right which the hirer would have had by virtue of section 20 under the first agreement, if such subsequent hire-purchase agreement had not been made.

**27. Evidence of adverse detention in suit or application to recover possession of goods.**— (1) Where, in a suit or application by an owner of goods which have been let under a hire-purchase agreement, to enforce a right to recover possession of the goods from the hirer, the owner proves that, before the commencement of the suit or application and after the right to recover possession of the goods accrued, the owner made a request in writing to the hirer to surrender the goods, the hirer's possession of the goods shall, for the purpose of the owner's claim to recover possession thereof, be deemed to be adverse to the owner.

(2) Nothing in this section shall affect a claim for damages for conversion.

**28. Hirer's refusal to surrender goods not to be version in certain cases.**— If, during the subsistence of any restriction to which the enforcement by an owner of a right to recover possession of goods from a hirer is subject by virtue of this Act, the hirer refuses to give up possession of the goods to the owner, the hirer shall not, by reason only of such refusal, be liable to the owner for conversion of the goods.

**29. Service of notice.**— Any notice required or authorised to be served on or given to an owner or a hirer under this Act may be so served or given—

(a) by delivering it to him personally; or

(b) by sending it by post to him at his last known place of residence or business.

**30. Power to exempt from provisions of sections 6, 9, 10, 12 and 17 in certain cases.**— Where the Central Government is satisfied that having regard to—

(a) the short supply of any goods or class of goods, or

(b) the use or intended use of any goods or class of goods and the persons by whom such goods or class of goods are used or intended to be used, or

(c) the restrictions imposed upon the trade or commerce in any goods or class of goods, or

(d) any other circumstances in relation to any goods or class of goods,

it is necessary or expedient in the public interest so to do, the Central Government may, by notification in the Official Gazette, direct that clause (b) of sub-section (2) of section 6, section 9, section 10, section 12 and section 17 or any of them shall not apply or shall apply with such modifications as may be specified in the notification, to hire-purchase agreements relating to such goods or class of goods.

**31. Act not to apply to existing agreements.**—This Act shall not apply in relation to any hire-purchase agreement made before the commencement of this Act.

## The General Insurance (Emergency Provisions) Amendment Act, 1972

AN

ACT

*to amend the General Insurance (Emergency Provisions) Act, 1971.*

Be it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

**1. Short title and commencement.**— (1) This Act of 1971.— In the General Insurance (Emergency Provisions) Amendment Act, 1972.

(2) It shall be deemed to have come into force on the 13th day of May, 1971.

**2. Insertion of new section 4A and 4B in Act 17 of 1971.**— In the General Insurance (Emergency Provisions) Act, 1971 (hereinafter referred to as the principal Act), after section 4, the following sections shall be inserted, namely:—

**"4A. Application of Act 1 of 1956.**— (1) Notwithstanding anything contained in the Companies Act, 1956, or in the memorandum or articles of association of any insurer or in any other instrument, no resolution passed at any meeting of the Board of directors or of the members of an insurer shall be given effect to unless approved by the Central Government.

(2) Subject to the other provisions contained in this Act and subject to such exceptions, restrictions and limitations, if any, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the Companies Act, 1956 and the Insurance Act shall continue to apply to every insurer in the same manner as they applied to him before the appointed day. 1 of 1956.

(3) Every notification made by the Central Government under sub-section (2) shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, or both Houses agree that the notification should not have been made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

**4B. Custodian or other person to be in charge of the management of the undertaking of the insurer.**— Subject to such directions and instructions as the Central Government may give under this Act, the Custodian, or, where no Custodian has been appointed in relation to the undertaking of any insurer, the person in charge, under

section 3, of the management of the undertaking of the insurer, shall alone be entitled to exercise all the powers of management in connection with, or incidental to, the carrying on or otherwise of the general insurance business of the insurer, whether such powers are derived from the Companies Act, 1956, or from the memorandum or articles of association of the insurer or from any other source."

**3. Amendment of section 6.**—In sub-section (2) of section 6 of the principal Act,—

(a) in sub-clause (i) of clause (A), for the words "dividend during at least one", the words "dividend for at least one" shall be substituted;

(b) in clause (B), for the words "net premium income of the undertaking of the insurer in India", the words "net premium income of the undertaking of the insurer in so far as it relates to business effected in India" shall be substituted.

**4. Saving.**—The provisions of the General Insurance (Emergency Provisions) Act, 1971, as amended by this Act, shall have effect notwithstanding any judgment, decree or order of any Court or Tribunal.

The National Service Act, 1972

#### ARRANGEMENT OF SECTIONS

##### CHAPTER I

###### Preliminary

###### Sections

1. Short title, extent and commencement.
2. Definitions.

##### CHAPTER II

###### Liability of persons to render national service

3. Liability of persons to be called up for national service.
4. Voluntary service in lieu of national service.
5. Liability to complete interrupted service.
6. Power of Central Government to direct a person to render service with the Armed Forces of Union or other national service.
7. Discipline.
8. Power of Central Government to require any employer to release qualified persons.
9. Transfer.
10. Persons not to leave national service or be discharged therefrom unless permitted by Central Government.

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###### Registration and enlistment for national service

11. Persons required to register.
12. Registration.
13. Notice of likelihood of calling up for national service.
14. Enlistment for national service.
15. Salary, wages, etc., and travelling allowances to be paid to persons enlisted for national service.
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18. National Service (Hardship) Committee.
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23. Reinstatement.
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28. Information to be furnished by Universities, etc.
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33. Protection of action taken in good faith.
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35. Power to delegate.
36. Power to make rules.
37. Power to make regulations.
38. Rules and regulations to be laid before Parliament.

#### The National Service Act, 1972

AN

ACT

*to provide for the registration of qualified persons and for the rendering of national service by such persons and for matters connected therewith.*

Be it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

##### CHAPTER I

###### Preliminary

**1. Short title, extent and commencement.**—(1) This Act may be called the National Service Act, 1972.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

(a) "employer" means any person who employs any qualified person for doing any work in any establishment and includes any person entrusted with the supervision and control of qualified persons in such establishment;

(b) "establishment" means—

(i) any office, or

(ii) any place where any industry, trade, business or occupation is carried on, and includes any technical institution or training centre;

(c) "national service" means any service which is likely to assist the defence of India and civil defence or the efficient conduct of military operations and includes such social service as the Central Government may, if it is of opinion that it is necessary for public purposes so to do, by notification specify in this behalf;

(d) "notification" means a notification published in the Official Gazette;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "qualified" means a citizen of India who is ordinarily resident in India and who, —

(i) has obtained a recognised medical qualification within the meaning of the Indian Medical Council Act, 1956, or 102 of 1956.

(ii) has obtained, or has passed an examination which entitles him to obtain, a degree of a University or its equivalent qualification in any branch of engineering or technology or both.

*Explanation.* — For the purposes of this Act, a qualified person who is resident in India shall be deemed to be ordinarily resident there unless —

(a) he is residing there only for the purposes of attending a course of education; or

(b) the circumstances of his residence there are otherwise such as to show that he is residing there for a temporary purpose only; or

(c) he, being a person who was born or domiciled in any country outside India, has been resident in India for less than two years.

## CHAPTER II

### Liability of persons to render national service

**3. Liability of persons to be called up for national service.** — (1) Every person who —

(a) is a qualified person at the commencement of this Act, or

(b) becomes a qualified person after such commencement,

shall, if he has not attained the age of thirty years at such commencement, or, as the case may be, on the date on which he becomes a qualified person, be liable until he attains the age of thirty years, to be called up for national service for a period of not more than four years.

(2) The period of national service for which a qualified person shall be liable to be called up under this Act shall begin from the date on which he is required by an enlistment notice served under this Act to present himself to the authority specified therein and shall end on the day when his term of national service is completed in accordance with the provisions of this Act.

**4. Voluntary service in lieu of national service.** —

(1) If a qualified person has been enlisted under any other law for the time being in force, for service in one of the Armed Forces of the Union for a period of not less than four years, he shall perform the service required of the members of that Force in lieu of the national service required under this Act.

(2) If a qualified person has rendered or is rendering service, other than service in one of the Armed Forces of the Union and such service is declared by the Central Government to be equivalent to national service, the period of such service shall be deemed to be service in lieu of the national service required under this Act and he shall (unless he has ceased to be liable under this Act to be called up for national service), be liable to be called up for national service for such term as will, together with the service com-

pleted by him, be equivalent to the term of service for which persons are liable to serve under this Act.

(3) If any qualified person has been enlisted as a member of —

(a) the Indian Reserve Forces, regulated under the Indian Reserve Forces Act, 1888, 4 of 1888.

(b) the Territorial Army constituted under the Territorial Army Act, 1948, 56 of 1948.

(c) the Air Force Reserve or the Auxiliary Air Force Reserve constituted under the Reserve and Auxiliary Air Forces Act, 1952, 62 of 1952.

(d) the Indian Naval Reserve Forces raised and maintained under the Navy Act, 1957, or 62 of 1957.

(e) any other Force of the foregoing nature,

he shall not be called up, so long as he continues to be a member of that Force, to render national service under this Act:

Provided that he shall, after he has ceased to be a member of such Force, be liable to render national service (unless he has ceased to be liable under this Act to be called up for national service), for such term as will, together with the actual service rendered by him as a member of that Force, be equivalent to the term of service for which persons are liable to serve under this Act.

**5. Liability to complete interrupted service.** — If any qualified person serving in the Armed Forces of the Union ceases to serve therein before he has completed four years of such service, he shall, unless he has ceased to be liable under this Act to be called up for national service, be liable to be called up to serve for such term as will, together with the service completed by him, be equivalent to the term of service for which persons are liable to serve under this Act.

**6. Power of Central Government to direct a person to render service with the Armed Forces of Union or other national service.** — Subject to the provisions of section 3, the Central Government may, by order, require a qualified person to render service in the Armed Forces of the Union or such other national service, as it may specify in this behalf, for such period and at such place as may be specified in the order.

**7. Discipline.** — (1) Every qualified person enlisted under this Act for national service in the Armed Forces of the Union shall, subject to such conditions as may be prescribed, be bound to serve in any branch of the Armed Forces to which he is for the time being attached, and shall be subject to all laws, rules, regulations and orders in force for the time being in relation to such branch.

(2) Every qualified person enlisted for any national service, other than service in the Armed Forces of the Union shall, subject to such conditions as may be prescribed, be bound to serve in any position or post to which he is appointed for the time being, and shall be subject to all laws, rules, regulations and orders in force for the time being in relation to such position or post.

**8. Power of Central Government to require any employer to release qualified persons.**—(1) The Central Government may, by order in writing, require any employer to release any qualified person for employment in national service within such time as may be specified in the order.

(2) Where an employer releases a qualified person for employment in national service, such employer shall not be liable to pay the salary, wages and other emoluments, if any, of the qualified person for the period during which national service is or has been rendered by the qualified person.

(3) No contract, subsisting between a qualified person and his employer on the date of release of the qualified person for employment in national service, shall be enforceable until such qualified person has been discharged from national service.

(4) In computing the period specified in any contract of service in relation to a qualified person who has been called upon to render national service, the period of national service actually rendered by such qualified person shall be excluded.

(5) If any employer fails without sufficient cause to comply with the order made under sub-section (1), he shall be liable to be punished with imprisonment for a term which may extend to three years and also with fine which may extend to one thousand rupees.

**9. Transfer.**—The Central Government may, by regulations, make provisions for enabling or requiring a qualified person rendering national service in any branch of the Armed Forces of the Union to be transferred to any other branch of that Force or to any other branch of national service or *vice versa*.

**10. Persons not to leave national service or be discharged therefrom unless permitted by Central Government.**—(1) No qualified person rendering national service under this Act shall leave such service until he is discharged therefrom under section 17.

(2) No qualified person who has been served with a notice under sub-section (1) of section 13 or an enlistment notice under section 14 shall, if he is in any employment at the date of service of such notice, leave such employment or be discharged therefrom, except in accordance with the provisions of this Act.

Provided that nothing in this sub-section shall apply where the employment of a qualified person is terminated for the reason that the said person has been guilty of gross insubordination, habitual absence from work, or serious misconduct or has been convicted of an offence.

(3) If a qualified person who has been served with a notice under sub-section (1) of section 13 or an enlistment notice under section 14 leaves any employment in which he is engaged at the date of service of such notice or is discharged therefrom otherwise than in accordance with the provisions of this Act, he or, as the case may be, the person by whom he is discharged, shall be punished with imprisonment for a term which may extend to five years and also with fine which may extend to two thousand rupees.

### CHAPTER III

#### Registration and Enlistment for National Service

**11. Persons required to register.**—(1) Every qualified person shall, if he is liable, at the commence-

ment of this Act, to be called up for national service, make an application, within ninety days from such commencement, to be registered under this Act.

(2) Every qualified person who becomes liable after the commencement of this Act, to be called up for national service, shall, within thirty days from the date on which he becomes so liable, make an application to be registered under this Act.

**12. Registration.**—(1) The Central Government shall, by general order, direct qualified persons who are required to be registered under this Act,—

(a) to furnish at such place and time, in such manner and to such authority or person as may be specified therein, such particulars about themselves as the order may require; and

(b) to make at such place, in such manner and to such authority or person as may be specified in the order, an application to be registered under this Act.

(2) The order made under sub-section (1) may make different provisions in relation to different classes of qualified persons subject to registration and may provide for exempting from any requirements of the order of any class of qualified persons with respect to whom the Central Government is satisfied that particulars sufficient for the purposes of this Act can be ascertained otherwise than by virtue of those requirements.

(3) If any qualified person fails to comply with any requirement of the order made under sub-section (1), he shall be liable to be punished with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

(4) The Central Government shall ensure—

(a) that upon an application duly made for registration under this Act, the name and address of the applicant together with the particulars of the matters with respect to which information was given by the applicant in pursuance of the order made under sub-section (1) are entered in a register kept for the purposes of this Act, to be known as the "National Service Register"; and

(b) that upon the applicant being registered, a certificate of registration is issued to the applicant in the prescribed form.

(5) The information contained in the National Service Register shall not be used for any purpose other than the purposes of this Act:

Provided that nothing in this sub-section shall preclude the Central Government from disclosing, for statistical purposes, any information contained in the National Service Register.

(6) The Central Government may cause registration to be made of, and a certificate of registration to be issued to, any qualified person of a class exempted from any of the requirements of sub-section (1) as if that person had duly applied to be registered under this Act.

(7) (a) If any qualified person subject to registration under this Act communicates to the Central Government in the prescribed manner, that he has a preference for the Army, Air Force or Naval Ser-

vice, that fact shall be recorded in the National Service Register.

(b) If a qualified person belonging to a class which is exempted from registration under this Act has a preference for the Army, Air Force or Naval Service, he shall intimate such preference to the Central Government in such manner as that Government may specify and, on receipt of such intimation, the Central Government shall cause such preference to be recorded in the National Service Register.

(8) (a) If any change occurs in the name or address of any qualified person while such person remains registered under this Act, or if any such person acquires any additional academic or professional qualification or distinction, he shall forthwith communicate the change of his name or address, or, as the case may be, the acquisition by him of additional academic or professional qualification or distinction to the Central Government in the prescribed manner and at the same time return to the Central Government, for correction, any certificate of registration held by him and if he fails to communicate the change of his name or address, or, as the case may be, the acquisition by him of the additional academic or professional qualification or distinction, he shall be liable to be punished with fine which may extend to five hundred rupees.

(b) Upon the receipt of a communication of the change of name or address of any qualified person registered under this Act or of acquisition by him of additional academic or professional qualification or distinction, the Central Government shall cause the necessary corrections to be made in the entries in the National Service Register and shall either cause the certificate to be corrected and returned to such person or cause a fresh certificate to be issued to him.

(9) The Central Government may, by rules made under this Act, provide for the issue, in specified circumstances, of fresh certificates of registration in place of certificates which have been lost, destroyed or defaced.

**13. Notice of likelihood of calling up for national service.**—(1) The Central Government may from time to time cause to be served on any qualified person subject to registration under this Act, and, if he is engaged in any employment, also on his employer, a written notice in the prescribed form stating that such person is likely to be called upon, at any time within a period of twelve months next following, to render national service.

(2) Omission to serve any notice referred to in sub-section (1) on an employer or the service of such notice on a person who is not, at the time of service of such notice, the employer of the qualified person concerned shall not invalidate the notice served under sub-section (1) on the qualified person and shall not affect the liability of the qualified person to be called up for national service.

(3) The Central Government may cause to be served, on any qualified person served with a notice referred to in sub-section (1), a written notice requiring that person to submit to an examination, by such authority, at such place and at such time, as may be specified in the notice, of his physical and mental fitness for being called up for national service.

(4) The Central Government may make regulations for the examination of the physical and mental fitness of persons subject to registration under this Act and such regulations may, in particular, enable the medical and other authority—

(a) in case where he is unable to complete the examination on one occasion, to direct the persons examined to submit himself for a further examination on a specified time and place;

(b) to direct the person examined to submit himself for examination by a specialist.

(5) The Central Government may by regulations determine the categories in which persons under this section are to be placed with reference to their physical and mental condition.

(6) If any qualified person fails to comply with the requirements of a notice served on him under sub-section (3) or any regulations made or directions given under sub-section (4), he shall be liable to be punished with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

(7) The court by which a qualified person is convicted of an offence under this section may, without prejudice to any penalty which may be imposed on him, order him to submit himself to an examination of his physical and mental fitness, further examination or examination by a specialist, as the case may be, at such place and at such time as may be fixed by the court and any such order may provide that such person shall be detained in custody until that time and shall be taken by a police officer to that place and at that time:

Provided that no person shall be detained in custody by virtue of any such order for more than twenty-four hours.

(8) A qualified person who, having been ordered by a court under sub-section (7) to submit himself to an examination of his physical and mental fitness and to be detained in custody, is taken by a police officer to the place and at the time at which he is to be examined, does not submit himself to an examination of his physical and mental fitness in accordance with the order, he may be arrested by that or any other police officer without a warrant.

(9) A qualified person, who fails to submit himself to an examination of his physical and mental fitness in accordance with an order made under sub-section (7), shall be liable to be punished with imprisonment for a term which may extend to three years, and also with fine which may extend to one thousand rupees.

(10) A notice served on any qualified person under this section shall cease to have effect if, before that date on which he is required to submit himself to an examination of his physical and mental fitness, he ceases to be subject to registration under this Act.

(11) The Central Government may pay to the medical or other authority, specialist, or any qualified person undergoing examination of his physical and mental fitness under this section such travelling and other allowances, including compensation for loss of remunerative time, in accordance with such scales as may be prescribed.

**14. Enlistment for national service.**—(1) Subject to such priorities as may be prescribed, the Central Government may cause to be served on any qualified person for the time being liable under this Act to be called up for national service, who has been found, after an examination of his physical and mental condition, fit for such service, a written notice in the prescribed form (in this Act referred to as the "enlistment notice") stating that he is called up for national service in such one of the Armed Forces of the Union or in such other service as may be specified in the enlistment notice and requiring him to present himself at such place and at such time and to such authority, as may be specified in the notice:

Provided that an enlistment notice under this section shall not require the person upon whom it is served to present himself on a day earlier than the fourteenth day after the date of service of the notice or such earlier day as may be determined at his request.

(2) An enlistment notice served on any qualified person shall cease to have effect if, before the day on which he is thereby required to present himself, he ceases to be liable to be called up for national service under this Act.

(3) The Central Government may pay to persons required to present themselves in pursuance of an enlistment notice served upon them travelling and other allowances in accordance with such scales as may be prescribed.

(4) If on the day specified in the enlistment notice as the day on which the person to whom the notice relates is required to present himself for national service—

(a) a postponement certificate relating to him is in force, or

(b) any appeal or application by him for postponement of national service is pending,

the enlistment notice served on him shall be of no effect.

(5) The enlistment notice shall be served in such manner as may be prescribed.

**15. Salary, wages, etc., and travelling allowances to be paid to persons enlisted for national service.**—

(1) Every qualified person who is called up for national service under this Act, or who is transferred from one form of national service to another, shall be paid such salary, wages, allowances, pension, disability and death compensations and other benefits as may be prescribed:

Provided that such payments shall be on scales not less favourable than those admissible to persons of like qualifications, experience and length of service in similar positions under the Government.

*Explanation.*—For the purposes of the foregoing proviso, the length of standing of a qualified person as an engineer or medical practitioner, as the case may be, shall be construed as the length of his service.

(2) Any qualified person who is called up for national service or transferred from one form of national service, or from one place of employment in the national service, to another, shall be paid travelling allowance for journey to his place of employment under this Act at such rate as may be prescribed.

(3) A qualified person who, on the date of the service of the enlistment notice on him, is engaged in any employment, or a qualified person who is transferred from one form of national service, or from one place of employment in the national service, to another, shall be paid, for the period of his transit from the place of his former employment to the place of his employment under this Act, salary or wages (including allowances) at the rate fixed by the Central Government under sub-section (1).

(4) A qualified person who was in any employment on the date on which he was called up for national service under this Act, shall, on his discharge from such service, be paid salary or wages (including allowances) for the period of his transit from the place of his employment under this Act to the place of his former employment at the rate fixed by the Central Government under sub-section (1).

(5) A qualified person who is called up for national service under this Act shall, on the termination of his national service, be paid travelling expenses at such rate as may be prescribed, for journey to the place of his former employment, or, if he was unemployed when he was first called up for national service under this Act, to the place of his residence.

**16. Training.**—During his term of national service a qualified person may be required to undergo training for such period as may be prescribed.

**17. Discharge.**—(1) Every qualified person enlisted under this Act shall be entitled to receive his discharge from national service on the expiration of the period for which he was enlisted and such person may, prior to the expiration of that period, be discharged from national service by such authority and subject to such conditions as may be prescribed.

(2) A person receiving discharge under this section shall be given a certificate in such form as may be prescribed certifying that he has been discharged from national service.

(3) A person who has received discharge under this section shall not be required to render national service after such discharge:

Provided that a person who has received discharge under this section before he has completed four years of national service, shall, unless he has ceased to be liable to be called up for national service under this Act, be liable to be called up for national service under this Act for such term as will, together with the period of national service rendered by him, be equivalent to four years.

#### CHAPTER IV

##### Postponement of National Service

**18. National Service (Hardship) Committee.**—(1) The Central Government shall constitute a National Service (Hardship) Committee consisting of a Chairman and two other members appointed by it.

(2) The Chairman of the National Service (Hardship) Committee shall be a person who is, or has been, or is qualified to be, a Judge of a High Court.

(3) The members of the National Service (Hardship) Committee shall hold office for a period of three years but shall be eligible for reappointment.

(4) The proceedings of the National Service (Hardship) Committee shall not be invalid by reason of any defect in the constitution of, or any vacancy in, such Committee.

(5) Any vacancy in the National Service (Hardship) Committee shall be filled by the Central Government in such manner as it may think fit.

(6) The Central Government may constitute Regional National Service (Hardship) Committees for such regions as it may think fit and on such constitution such Regional National Service (Hardship) Committees shall have all the powers, functions and privileges of the National Service (Hardship) Committee and shall be subject to the same provisions as are applicable to that Committee.

(7) The National Service (Hardship) Committee shall have power to regulate its own procedure with regard to any investigation under this Act and shall have for the purposes of such investigation the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents producible as evidence;
- (c) receiving evidence on oath;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) such other matters as may be prescribed.

**19. Application for postponement on grounds of hardship.**—(1) Any qualified person who is for the time being liable to be called up for national service under this Act and who has been served with a notice referred to in sub-section (1) of section 13, or any employer of such qualified person, may apply, in the prescribed manner to the Central Government for a certificate of postponement of liability to be called up for national service on the ground that exceptional hardship would ensue if such qualified person were called up for national service, and may, on that ground apply, in the prescribed manner, for the renewal of the postponement certificate granted to him.

(2) Where an application for a postponement certificate or for the renewal thereof is made, the Central Government shall refer the application for decision to the National Service (Hardship) Committee.

(3) No application for the grant of a postponement certificate shall be referred by the Central Government to the National Service (Hardship) Committee unless such application is made within sixty days from the date of service of the notice referred to in sub-section (1) of section 13:

Provided that the Central Government may refer an application for the grant of a postponement certificate to the National Service (Hardship) Committee made after the expiry of the said period if it is satisfied, having regard to the grounds on which the application is made, that the making thereof has not unreasonably delayed.

(4) The Central Government may by regulations specify the principles to be applied and the circumstances to which regard is to be or not to be had for

the hearing of an application for the grant or renewal of a postponement certificate and as to the period for which the postponement certificate may be granted or renewed.

(5) The National Service (Hardship) Committee may, after consideration of the application for a postponement certificate or renewal thereof, grant or reject the same.

(6) The period within which the postponement certificate is in force shall be added to the period during which the person to whom the certificate was granted is liable under this Act to be called up for national service and accordingly this Act shall in relation to that person have effect as if for reference therein to the age of thirty years, there were substituted, an age being the sum of thirty years and the period during which—

(i) the postponement certificate is in force, and

(ii) the enlistment notice was of no effect by reason of the provisions of clause (b) of sub-section (4) of section 14.

(7) If any qualified person or an employer makes an application for a postponement certificate on a ground which he knows to be false or does not believe to be true or on a ground which, in the opinion of the National Service (Hardship) Committee, is frivolous, he shall be liable to be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

**20. Appeal from decision of the National Service (Hardship) Committee.**—(1) Subject to the provisions of sub-section (2), an appeal shall lie against the decision of the National Service (Hardship) Committee to the High Court exercising jurisdiction in relation to the territory in which the applicant for the postponement certificate voluntarily resides, carries on business or personally works for gain.

(2) No appeal referred to in sub-section (1) shall lie unless—

(i) it is preferred within thirty days from the date of the decision of the National Service (Hardship) Committee, and

(ii) the National Service (Hardship) Committee certifies that the case involves a substantial question of law.

(3) Where the National Service (Hardship) Committee has refused to give a certificate referred to in sub-section (2), the High Court may, if it is satisfied that the case involves a substantial question of law, grant special leave to appeal against the decision of the National Service (Hardship) Committee.

(4) The High Court may, after hearing the appeal, confirm, modify or reverse the decision of the National Service (Hardship) Committee.

**21. Revocation of postponement certificate.**—(1) If, at any time, while a postponement certificate is in force, it appears to the Central Government that, by reason of any change in the circumstances of the qualified person to whom the certificate was granted or of his employer, where such certificate was granted on the application of such employer, the certificate ought to be revoked or the period for which it was granted or last renewed ought to be shortened, the Central Government may apply to the National Service (Hardship) Committee, and that

Committee may either reject the application or cancel the certificate or vary it by shortening the period.

(2) Where an application is made under sub-section (1), the person to whom the postponement certificate in question was granted, and where such certificate was granted on the application of an employer, such employer, shall be entitled to be heard on the application and the provisions as to appeals contained in section 20 shall apply in relation to the application as if it were an application for the grant of a postponement certificate.

**22. Suspension of right to postponement of liability to be called up for national service.**—(1) The Central Government may, if it is satisfied at any time that by reason of the gravity of the situation it is necessary so to do, by order—

(a) cancel, either generally or in relation to a specified class of qualified persons, all postponement certificates in force at the date of the order, and

(b) abrogate, either generally or in relation to a specified class of qualified persons, any right to apply for the grant of a postponement certificate and any right to appeal from the refusal to grant such a certificate, and may, by order, vary or revoke any order in force under this section, without prejudice however to the previous effect of that order.

(2) Where, on the day on which an order comes into force under this section abrogating any right to appeal from the refusal to grant a postponement certificate, an appeal preferred by a person to whom the order applies or the time for preferring such appeal by such person has not expired, the appeal shall be deemed to be dismissed or the time shall be deemed to expire on the expiry of that day.

#### CHAPTER V

#### Reinstatement of qualified persons called up for National Service

**23. Reinstatement.**—(1) In this section,—

(a) “former employee” means a qualified person who was released by an employer for employment in national service;

(b) “former employer” means the employer by whom a former employee was employed in an establishment immediately before the enlistment of such employee for national service;

(c) “former employment” means the employment in which the former employee was employed immediately before his enlistment for national service.

(2) (a) A former employee may, on the termination of his national service, make an application in such manner and within such period as may be prescribed to his former employer for reinstatement in his former employment.

(b) On receipt of an application referred to in clause (a), the former employer shall be under an obligation (unless the employment of the former employee in the national service was terminated by dismissal for misconduct) to reinstate such employee before the expiry of a period of fifteen days from the date of receipt of such application.

(3) (a) If, on receipt of an application referred to in sub-section (2), the former employer refuses to reinstate the applicant on the ground that his

circumstances have so changed as to make it impossible or unreasonable for him to do so, or denies his liability to reinstate such former employee, or represents that the reinstatement by him of the former employee is impracticable, he shall, before the expiry of a period of fifteen days from the date of receipt of such application, make an application to the National Service (Hardship) Committee for relieving him from the obligation referred to in sub-section (2).

(b) A former employee, who is not reinstated in his former employment within fifteen days from the date of delivery of the application made under sub-section (2), may, within a further period of fifteen days (computed from the date on which the first-mentioned period of fifteen days expires), represent to the National Service (Hardship) Committee that his former employer has not discharged the obligation imposed on him by sub-section (2).

(c) On receipt of the application referred to in clause (a) or the representation referred to in clause (b), the National Service (Hardship) Committee shall, after considering all matters placed before it and after making such inquiry in the matter as it may think fit, make an order—

(i) relieving the former employer from the obligation referred to in sub-section (2), or

(ii) requiring the former employer to reinstate the former employee in his former employment, or

(iii) requiring the former employer to pay to the former employee by way of compensation, for failure or inability to reinstate him, a sum not exceeding an amount equal to six months' remuneration at the rate at which remuneration was last payable by the former employer to the former employee.

(d) Where the National Service (Hardship) Committee has directed the reinstatement of any person in his former employment, the former employer shall be under an obligation to pay to such person salary and allowances at the rates specified by the National Service (Hardship) Committee from the date of receipt of the application referred to in sub-section (2).

(4) (a) A former employer, who has refused to reinstate his former employee on any of the grounds specified in sub-section (3) and who has omitted or failed, without any reasonable excuse, to make an application to the National Service (Hardship) Committee within the time specified in sub-section (3), shall be punished, without any prejudice to the provisions of clause (b) of this sub-section, with imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both.

(b) If any former employer fails to obey any order made by the National Service (Hardship) Committee under sub-section (3), he shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both, and the court by which such former employer is convicted under this sub-section shall order him to pay to the person whom he has failed to re-employ, a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the former employer and any amount so required to be paid shall be recoverable as if it were a fine imposed by such court.

(5) Where in pursuance of the provisions of sub-section (2) a former employer reinstates his former

employee and thereafter terminates the employment of such former employee at any time within a period of six months from the date of such reinstatement, the former employer shall, notwithstanding anything to the contrary contained in the conditions of employment of the former employee, be liable to pay to the former employee, at the time of terminating his employment as aforesaid, a sum equal to the remuneration which the former employee would have earned under the terms and conditions of his re-employment for the unexpired portion of the said period of six months:

Provided that a former employer shall not be liable to make such payment as aforesaid where the employment of the former employee is terminated for the reason that the former employee has been guilty of gross insubordination, habitual absence from work or any serious misconduct or has been convicted of any offence;

Provided further that a former employee whose employment is terminated within the said period for any such reason as aforesaid may refer the matter to the National Service (Hardship) Committee and that Committee shall, after due consideration, decide whether or not the employer is liable as aforesaid under this sub-section; and any such decision shall be final and binding on the parties.

*Explanation.* — Any sum required to be paid under this sub-section shall be in addition to the amount, if any, which the employer may, under the conditions of employment be liable to pay in respect of the termination of the employment of the former employee without notice.

(6) No change in the name, constitution or character of the former employer shall affect the right of reinstatement of a former employee who has been released from employment in national service.

(7) (a) The occupation in which and the terms and conditions under which a qualified person may be reinstated after completion of national service shall not be less favourable to him than those which would have been applicable to him had his employment not been interrupted by reason of his being called up for national service.

(b) In determining the terms and conditions of reinstatement of the former employee, regard shall be had to the additional skill and experience acquired by such employee in the course of his employment in the national service.

**24. Preservation of certain rights of qualified persons required to render national service.** — While any qualified person, required to render national service under this Act, has any rights under any provident fund or other scheme for the benefit of employees maintained in connection with the employment he relinquishes, he shall continue, so long as he is engaged in national service and if he is reinstated, until such reinstatement under the provisions of this Act, to have in respect of such fund or scheme such rights as may be prescribed.

#### CHAPTER VI

##### Other offences and penalties

**25. False statement and forgery.** — (1) If any qualified person —

(a) on whom an enlistment notice has been served under this Act and in respect of whom no post-

ponement certificate is in force or no application or appeal for postponement of national service is pending, fails or omits to render the service which he is required by such notice to render, or

(b) having commenced to render national service, leaves that service without obtaining a discharge under section 17,

he shall be punished with imprisonment for a term which may extend to five years and also with fine which may extend to two thousand rupees.

(2) Any person who —

(a) in giving any information for the purposes of this Act, knowingly or recklessly makes a statement which is false in material particulars or which he does not believe to be true, or

(b) (i) with the intention of deceiving, forges or uses or lends or allows to be used for any person any certificate issued under this Act, or

(ii) makes, or has in his possession, any document so closely resembling any certificate so issued as to be calculated to deceive,

shall be punished with imprisonment for a term not exceeding three years, or with fine not exceeding one thousand rupees, or with both.

**26. General provision as to offences.** — Any qualified person who contravenes any provision of this Act for the contravention of which no penalty is separately specified in this Act, shall be punished with fine which may extend to five hundred rupees:

Provided that in any proceedings for an offence punishable under this section, it shall be a defence for the accused to prove that he was prevented from complying with the provisions of this Act by circumstances beyond his control.

**27. Offences by companies.** — (1) Where any provision of this Act or of any order made thereunder is contravened by a company, every person who at the time the contravention was made was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any such offence has been committed and it is proved that the offence has been committed with the consent or connivance, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.* — For the purposes of this section —

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

## CHAPTER VII

## Miscellaneous

**28. Information to be furnished by Universities, etc.**—It shall be the duty of every University or other persons having the management of any University, school or other educational institution, to give to the Central Government, at its request, such information in their possession, or reasonably available to them, about persons receiving, or who have received education in engineering, technology, medical sciences or surgery as the Central Government may, by notification, specify in this behalf.

**29. Information to be furnished by District Magistrate.**—It shall be the duty of every District Magistrate to give to the State Government such information in his possession about qualified persons within the local limits of his jurisdiction as may be prescribed, and it shall be the duty of every State Government to give to the Central Government all information in its possession about qualified persons in the State.

**30. Priority of debts.**—Notwithstanding anything contained in the Presidency Towns Insolvency Act, 1909, the Provincial Insolvency Act, 1920, the Companies Act, 1956, or the Partnership Act, 1932, any compensation payable under this Act shall have priority over all other unsecured debts.

**31. Summary trial of offences.**—Notwithstanding anything contained in the Code of Criminal Procedure, 1898, every offence punishable under this Act shall be tried summarily.

**32. Jurisdiction to try offences.**—No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

**33. Protection of action taken in good faith.**—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules, regulations or orders made thereunder.

(2) No suit or other legal proceeding shall lie against the Central Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of this Act or any rules, regulations or orders made thereunder.

**34. Removal of difficulties.**—(1) If any difficulty arises in giving effect to the provision of this Act, the Central Government may make such order, not inconsistent with the provision of this Act as may appear to it to be necessary for the purpose of removing the difficulty:

Provided that no order shall be made under this sub-section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under sub-section (1) shall be laid before both Houses of Parliament as soon as may be after it is made and the provisions of section 38 shall apply to such order as if it were a rule made under this Act.

**35. Powers to delegate.**—The Central Government may, by notification, direct that all or any of the powers which may be exercised by it under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised also by any State Government or any other authority owned or controlled by the Central Government.

**36. Power to make rules.**—(1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the principles governing the calling up of persons for national service;

(b) the form and contents of the National Service Register;

(c) the form in which the certificate of registration is to be issued;

(d) the manner of notification of preference for any branch of the Armed Forces of the Union;

(e) the manner of notification of change of name or address of, or acquisition of academic or professional qualification or distinctions by, a qualified person registered under this Act;

(f) the circumstances under which fresh certificate of registration in place of certificates which have been lost, destroyed or defaced may be issued;

(g) the form and contents of the notice for examination of physical and mental fitness;

(h) the scale in accordance with which travelling and other allowances may be paid to medical or other authority or specialist or to any qualified person undergoing any examination of physical and mental fitness and the scale according to which compensation may be paid for loss of remunerative time;

(i) the priorities in accordance with which qualified persons may be enlisted for national service;

(j) the form and contents of the enlistment notice and the manner of service thereof;

(k) the scales of salary, wages, allowances, pensions, disability and death compensation and other financial benefits admissible to those performing national service;

(l) the scales of travelling allowances required to be paid under this Act;

(m) the authority by which and conditions subject to which prior discharge from national service may be made;

(n) the form of discharge certificate;

(o) the manner of application for a certificate of postponement of liability to be called up for national service or for renewal thereof and the time within which such application for renewal should be made;

(p) the conditions of reinstatement of persons released from employment in the national service and matters connected therewith;

(q) further inquiry which may be made by the National Service (Hardship) Committee where

reinstatement of qualified persons released from employment in the national service is refused or denied or where such reinstatement is represented to be impracticable;

(r) the preservation of rights of provident fund, etc., of qualified persons rendering national service;

(s) the information relating to qualified persons which every District Magistrate shall furnish to the State Government;

(t) any other matter which is required to be, or may be, prescribed under this Act.

(3) Any rule made under this Act may provide that a contravention of the rule shall be punished with imprisonment for a term not exceeding six months, or with fine not exceeding one thousand rupees, or with both.

**37. Power to make regulations.**—The Central Government may make regulations not inconsistent with this Act, to provide for all or any of the following matters, namely:—

(a) enabling or requiring a qualified person to be transferred to any branch of the Armed Forces of the Union or to any other branch of national service;

(b) examination of physical and mental fitness of qualified persons subject to registration under this Act;

(c) determination of the categories in which qualified persons whose physical and mental fitness has been examined shall be placed by reference to their physical or mental conditions or both;

(d) specification of the principles to be applied and the circumstances to be considered while hearing an application for the grant or renewal of a postponement certificate;

(e) specification of the period for which a postponement certificate may be granted or renewed;

(f) any other matter for which regulations are required to be, or may be, made under this Act.

**38. Rules and regulations to be laid before Parliament.**—Every rule and every regulation made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforeaid, both Houses agree in making any modification to the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

## The Constitution (Twenty-ninth Amendment) Act, 1972

AN  
ACT

*further to amend the Constitution of India.*

Be it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

1. **Short title.**—This Act may be called the Constitution (Twenty-ninth Amendment) Act, 1972.

2. **Amendment of Ninth Schedule.**—In the Ninth Schedule to the Constitution, after entry 64 and before the *Explanation*, the following entries shall be inserted, namely:—

“65. The Kerala Land Reforms (Amendment) Act, 1969 (Kerala Act 35 of 1969).

66. The Kerala Land Reforms (Amendment) Act, 1971 (Kerala Act 25 of 1971).”

Labour and Information Department

Mormugao Port Trust

Notification

MPT/IGA(16)/72

As required under Section 124(2) of the Major Port Trusts Act, 1963 the following amendments to the Mormugao Port Employees' (General Provident Fund) Regulations, 1964 and the Mormugao Port Employees' (Contributory Provident Fund) Regulations, 1965 adopted by the Board of Trustees are hereby published:—

I Introduce the following note below Regulation 12(1) of the Mormugao Port Employees (General Provident Fund) Regulations, 1965.

“Note:—

The power of the Board to sanction the transfer of the Provident Fund balances to the Provident Fund Account of the employees in the Port may be exercised by the Chairman.”

II Introduce the following note below Regulation 4(2) of the Mormugao Port Employees (Contributory Provident Fund) Regulations, 1965.

“Note:—

The power of the Board to sanction the transfer of the Provident Fund balances to the Provident Fund Account of the employees in the Port may be exercised by the Chairman.”

By order,

M. J. Kurian  
Deputy Secretary

Mormugao, 5th June, 1972.